



Applicant

Christian MAYAUD

Serial No.

09/941,681

Filing Date

August 30, 2001

Title

A COMPUTERIZED PRESCRIPTION SYSTEM FOR

GATHERING AND PRESENTING INFORMATION

RELATING TO PHARMACEUTICALS

Examiner

Samuel G. Rimell

Group/Art Unit

2165

Commissioner for Patents Alexandria, VA 22313-1450

DECLARATION OF PRIOR INVENTION IN THE UNITED STATES OR IN A NAFTA OR WTO MEMBER COUNTRY TO OVERCOME A CITED PATENT OR PUBLICATION 37 C.F.R. § 1.131

I. Christian Mayaud, am the named inventor of the '681 Application.

The present '681 Application is a continuation of United States Patent Application serial number 09/121,597, filed July 24, 1998, which is a continuation of United States Patent Application serial number 08/942,372, filed October 2, 1997 (now U.S. Patent number 5,845,255), which is a continuation of U.S. Patent Application serial number 08/330,745 (the '745 Application) filed October 28, 1994 (now abandoned).

From at least a date prior to December 13, 1993, until the date my '681 Application was filed, I continuously worked on my invention, set forth in the '681 Application, by meeting with

and communicating with my patent attorneys, who were drafting my application, as well as continuing the process of building apparatus and processes to carry out my inventions.

For many many years, it has been my practice to keep detailed notes of my daily activities, and schedules in a personal appointment book system. The appointment book system that I used had a separate notebook for each calendar month. Each notebook was bound with a spiral ring. It has further been my practice to keep these appointment books from year to year.

At the request of counsel I searched for and found my appointment books for the years 1993 and 1994. I recently reviewed these appointment books and searched for entries related to the filing of the '681 Application. Attached hereto are copies of these relevant pages from my personal appointment books. The entries in these appointment books were made by me contemporaneous with the dates indicated.

On a date prior to December 13, 1993, I retained a Patent Law Firm to file a patent application for my said inventions. From a date prior to December 13, 1993 and up to October 28, 1994 I continuously and regularly met and communicated with my patent attorneys who drafted my patent application. As a result of continuous and diligent meetings and communications with my patent attorneys, a patent application was drafted resulting in the '681 Application, which had 172 typewritten pages in the specification and 16 sheets of drawings. The '681 Application was filed with 69 claims which included three independent claims. In order to draft this application, considerable amount of time was necessary to meet and communicate with my patent attorneys and review each claim as well as to review the entire specification and the drawings and flow charts. The specification drafted by my patent attorneys included at least 35 separate sections detailing and describing my invention, which required the

January 11, 1994. "11am aggregating/Hayes/TT" This is a reference to a meeting regarding use of prescriptions in a PDA (Personal Digital Assistant) with a director of the F.D.A., Hayes.

January 21, 1994. "Review Handal fax"

January 24, 1994. "Handal call back content overview Q & A screen"

February 8, 1994. "Called Susan Will...at USP... discussed Licensing options...need documentation from USP" USP is U.S. Pharmicapia, looking for data, listing of drugs

February 14, 1994. "Send/fax list of trademarks to Handal... Follow up with Susan Williams at USP... Follow up with USP Lawyer"

February 15, 1994. "Review Patent Claims and send to Handal for second cut"

February 21, 1994. "Call Beth re Vets Online"

February 25, 1994. "Call Tony Handal re Trademarks ... Fax lists"

February 28, 1994. "Call Tony Handal re Dentists/Vets/Pharmacists Online...physicians... Online Model"

March 2, 1994. "Handal Med-E-Vision...TM: Dentist Online, Pharmacists Online, Vets Online"

March 7, 1994. Review MEM patent claims, Review POL patent claims, call Greg re Patent Claims, review Desktop POL metaphor" MEM here refers to Med-E-Mail and a handheld PDA. Greg Fraley is the individual.

March 8, 1994. "Review Rx info...Rx interaction... Review interface with Bill... Send POL/MEM patent claim to Handal"

March 9, 1994. "USP Rx data... get POL claims from Cheryl, get POL claims from Bill"
They reviewed the patent claims, both Officers at POL.

March 11, 1994. "Call Greg re Patent" Greg Fraley was in charge of programming development. His company was in Chicago. He was developing the programming for my invention/system.

March 14, 1994. "Write Patent overview statement"

March 24, 1994. "MEM Technical meeting/TT... Review Patent work with Handal (MEM)" MEM refers MediMail which was the subject of my invention. TT is Tarrey Town where meetings took place with Chicago personnel.

March 25, 1994. "9:30 Handal/Roger phone conference...review POL Patent claims...follow up with Greg re--...follow up FAX..." Roger refers to Roger Pitt at the Firm who assisted Tony Handal in drafting my patent application.

April 1, 1994. "Finish MEM business plan revisions" MEM included Smart Scripts.

April 13, 1994. "Apple Jame Curley" Jane Curley worked for Apple and was involved in the Newton project in California. Our system was disclosed to her on a confidential basis so that she could provide information to us regarding their development of the Newton PDA in order for us to evaluate use of that product in our system.

April 14, 1994. "Metricom" Metricom was a wireless provider, they were building a digital spectrum "Ricochet" which was a wireless carrier which we were exploring use of their services for our products.

April 15, 1994. "Call Handal re Med E Net Health Bank and ..." Later Med E Net became Physicians Prescribing Network.

April 18, 1994. "Follow up with Handal on Med E Net (Health Bench/E-Media)" Health Bench was a code name for our server providing directory services in the system.

April 21, 1994. "4pm Middleton meeting (4/21)... called Jane Curley" Middleton was Anderson Consulting, confidential discussions related to a pilot project was being explored regarding the implementation of E-Prescribing.

April 25, 1994. "7pm Apple/Curley/Brian/Newton CAP...call Jane Curley at Apple re Newton Develop Brian" Brian Dear was in San Diego and had developed a client server using a Unix system. Newton refers to Apple's PDA at issue was whether the Newton would work and talk to Brian's server. Curley brought in her technical people at this meeting.

April 27, 1994. "Follow up with Handal re Health Bank E-Media"

May 2, 1994. "Submit trademark application changes/Med E Net... call Handal re MES service mark...review MAC CAP development update strategy, call Apple, Jane Curley re support for MAP" MAC CAP refers to Macintosh Client Application Development.

May 3, 1994. "Test MAC CAP on _____ system"

May 7, 1994. "1-2pm Brian Salsburg/Metricom"

May 9, 1994. "Call Jane Curley re Newton and voicemail POL and MEM voicemail...Handal follow up... Handal POL-by physician for... MEM-the Point of Care Connection"

May 11, 1994. "Call Brian re Newton, MAC CAP, E-mail, ... Voicemail" Brian was our platform developer in Chicago and with the Newton we were determining whether the Newton platform was mature enough to work with our system. Everything was being developed simultaneously.

May 12, 1994. "Discuss Brian/Coconet with Steve Newton, WIN and MAC CAP...

Newton/\$/Apple" The name of our platform was Coconet using COCO TALK, which stood for Community Communications Network, today that would be considered the html language which did not exist at that time.

May 18, 1994. "Follow up with Handal re service mark (5/9)... Follow up with Handal re Health Bank E Media"

May 20, 1994. "Follow up with Handal"

May 23, 1994. "Handal Veterinary Online, Pharmacists Online" These were for online services for Vets and Pharmacists to use and interact with our system.

May 27, 1994. "Handal re Med E Mail" Med E Mail was E-prescription system.

May 30, 1994. "Review Med E Mail response"

May 31, 1994. "Handal re MediMedia (triple i)" Triple i Pads were prescription pads given to doctors. We were looking for a way to incorporate advertising into the pads and also trying to figure out if we could draft a patent claim to that.

June 1, 1994. "Outline Personal Prescribing Center with Paul... Handal, Health Bench, E Media, Pharmacists Online, Vets Online, re service mark (5/9)" The personal prescribing center was the patient side of Smart Scripts, personal prescribing, described in the invention. We were raising issues how to confirm or authenticate the doctor's use of the DEA number on the E Prescription.

June 6, 1994. "Med-E-Care/Med-E-Media with Handal"

June 9, 1994. "Handal MES patent (5/9), POL service...Health Bank... Pharmacists Online, Vets Online"

June 13, 1994. "Review...with Handal and Patents (5/9, 6/9)"

June 14, 1994. "Call Motorola re group ATP...Finalize MES DBA...Handal-Med-E"
ATP was Motorola's Advance Technology Program we were using for prescriptions. At
this time we were finalizing the Medi System data base architecture.

June 17, 1994. "10 Handal phone conference, Handal conference call, Handal phone conference..., review trademark status, review patent status, (6/9) (5/9), "Med-E" strategy Vets Pharmaceutical"

June 21, 1994. "4pm Handal conference call... Handal conference call"

June 22, 1994. "Call Motorola Group 16: ATP," exploring whether we could use in our system the ATP and the Motorola "Envoy" handheld wireless for prescriptions.

June 23, 1994. "Call J. Curley at Apple Re: Newton CAP"

June 29, 1994. "Call Handal Re: Trademark modification...call Handal re: CM3"

June 30, 1994. "MES 1. Health Bank, 2. New screen shots, 3. patent review, 4. get screen photos with JE preferred, demo scenarios" Health Bank referrers to the server for the prototype, JE was John Edelson.

July 5, 1994. "Call IMS re: personal prescribing profiles, call Motorola re: ATP...finish CM3 drafts review" IMS is a company that owns prescription data. IMS aggregates the data to help pharmaceutical industry to analyze information including prescriptions, drugs and doctors. This IMS information was used to make Smart Scripts work and to prepopulate the server with information.

July 6, 1994. Call Handal re: trademark modifications...call Handal re: MES patent review CM3"...call Joanne Tamm for smart script screen shots...call Handal re: Primedia"

July 7, 1994. "Arrange Health Bench... at MES... arrange new interface review"

July 12, 1994. "Schedule patent review, finish CM3 draft review"

July 13, 1994. "Follow up with Greg re: HOST...call Patent Attorney" the above mentioned re: HOST referred to arrange Federal funding

July 17, 1994. "Review patent application"

July 20, 1994. "9:30 Handal meeting/Review Patent Application"

July 26, 1994. "Call IMS re: PPP" PPP stands for Physician's Personal Prescribing Profile

July 27, 1994. "Follow up MediMail Response...arrange MES/Chicago meeting with DBA re: H/B...call Scott Cleary at Anderson" MediMail response is another acronym for the system, the MediSystems was referring to a Chicago meeting with our developers regarding the database and Scott Cleary at Anderson Consulting was a possible partner for the Smart Script system.

August 1, 1994. "11am interview with Wired" Wired was a publication/magazine and the published interview was on virtual patient records and E-prescriptions

August 3, 1994. "Call wired reporter"

August 11, 1994. "Follow up with Handal re: patent...call Scott Cleary at Anderson"

August 15, 1994. "Review ATP with Jon and Steve...follow up with Handal re:

Patent...re: MediMail response... call IMS re: PPP...call Brian re: MACCAP...Finish

ATP memo for Steve/Jon" ATP was a file transfer protocol with Motorola being

developed and explored for the POL system.

August 17, 1994. "Call Motorola/Phoenix Group... call Phil _____... follow up with Handal re: Patent/MediMail response promedia/pro onlines" Phil was approached regarding an alternate drug database.

August 19, 1994. "Follow up with Handal re: Patent...follow up with Adam Lambda re: Patent" Adam Lambda is another patent attorney that had experience in drafting software patents and had been contacted as a back up to Handal who I thought had not done a software patent previously.

August 25, 1994. "Follow up re: MES patent" MES stands for Medi Systems.

August 29, 1994. "Follow up with Roger re: Patent, follow up with Handal re: TM's"

September 1, 1994. "Call Handal patents"

September 2, 1994. "Call Handal re: E-Media Med-E-Media"

September 5, 1994. "Arrange Chicago MES trip for Wed/Thurs...Tamm" Tamm is a code word for interfaces used in the system being developed in Chicago.

September 9, 1994. "Call Scott Cleary at Anderson, follow up with Greg re HOST... call Motorola/Phoenix Group... follow up with Brian/Jon on FAX printer...call Tony re

confidentiality..." References above to Greg were obtaining documents from Motorola in regards to their protocol, references to FAX printer was regarding faxing of prescriptions and sending the fax to a printer. The reference to Tony is Dr. Tony Kotin who was being consulted in regards to liability issues on the server side. At this time there was no HIPPA regulations which we were anticipating and Tony's expertise was in this area.

September 13, 1994. "Call Tony Handal, E-Media, Med E-Media, Promedia"

September 15, 1994. "Follow up Tony Kotin, confidentiality"

September 16, 1994. "Fax Med E-mail use statement to Handal"

September 18, 1994. "Finish Patent Review"

September 19, 1994. "Incorporate Patent revisions...finish Patent Review"

September 20, 1994. "Call Tony re: confidentiality spokesman...Greg Frailey follow up with Jane Curley" Tony Kotin,

September 29, 1994. "Follow up with Scott Clearly at Anderson, follow up with Greg re: HOST, call Motorola re: Phoenix Group" All actions related to development of the POL system.

September 30, 1994. "9:30 Handal/Roger appointment" My Patent Attorneys.

October 7, 1994. "Review Patent application with Roger, call Brian re: Apple with Newton CAP"

October 8, 1994. "Review Patent application"

October 10, 1994. "Finish patent review, call Jane Curley with Steve... call Roger with corrections/Patent"

October 11, 1994. "Call Handal re WHIN Trademark... call Jane Curley with Steve"

October 12, 1994. "Finish Patent work"

October 13, 1994. "8:30 Roger meeting at Handal/Norwalk"

October 14, 1994. "Review Trademarks"

October 17, 1994. "Follow up with Roger re MES Patent App"

October 18, 1994. "Review trademarks, outline MEM/SPD... review Domain Names..."

October 20, 1994. "Order Apple Human Interface Design Guide... follow up with Jane Curley"

October 21, 1994. "Call Roger with Revisions... Fax new _____ to Roger"

October 24, 1994. "10am call Handal/Roger for Final Review... Finalize Patent App...review all TM activity"

October 25, 1994. "Review Final Patent changes...Review all TM activity"

October 26, 1994. "Call Handal re: TM's/Patent work"

October 27, 1994. "Call Roger re: patent deadline Tony inventorship ... Inventor — contributed materially to the inventiveness of the product ... the particular manifestation of the invention". On this date, a discussion with Tony Handal, took place in regards to the inventorship by Jonathan Edelson. It was decided that a separate application would be filed, substantially identical to the above captioned application but containing claims that were co-invented. There was no delay in filing the above captioned application

because of filing the second application (serial no. 330,939), both said applications were filed on the following date October 28, 1994.

DECLARATION

I, Christian Mayaud, hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the united States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: January 25, 2005

Christian Mayaud 2 Governors Road

Bronxville NY 10708

By: Ted. W. Whitlock, on behalf of Christian Mayaud, Authorized Signatory of Assignee, CYBEAR, LLC.

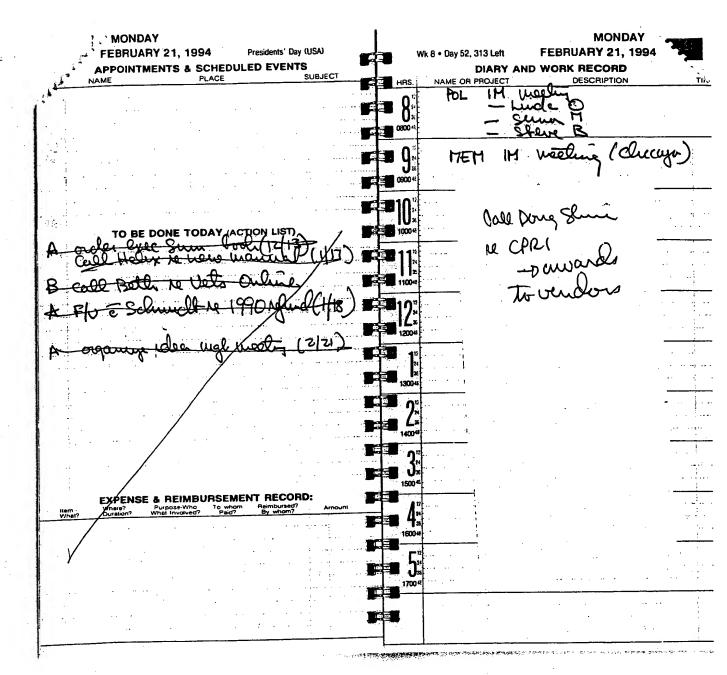
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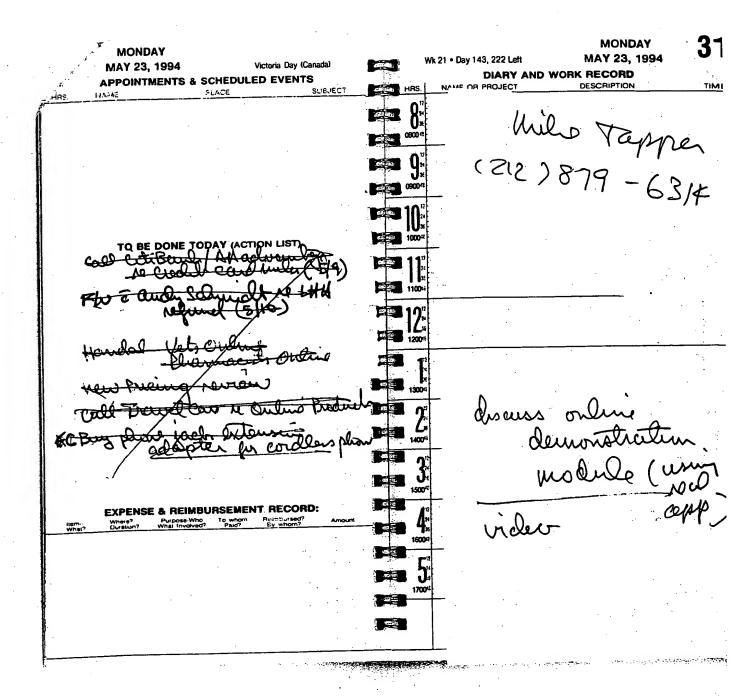
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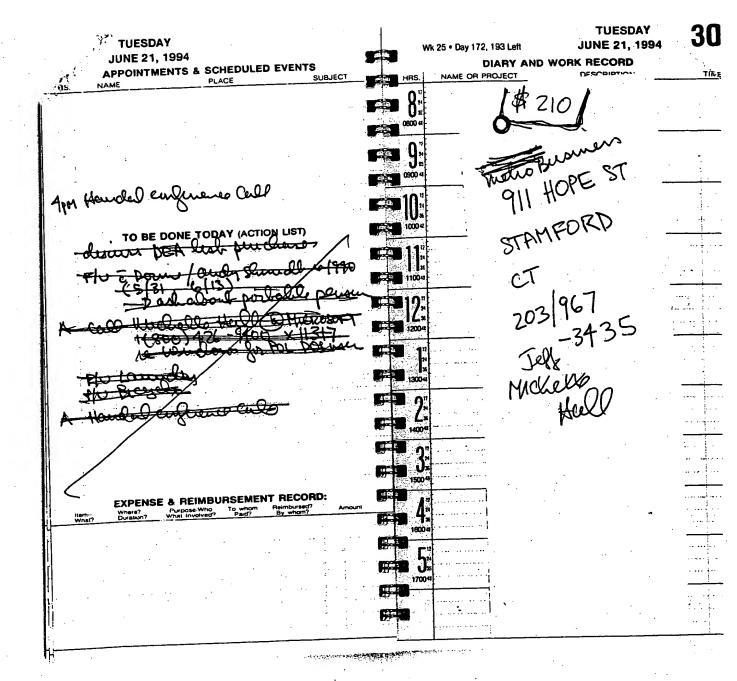
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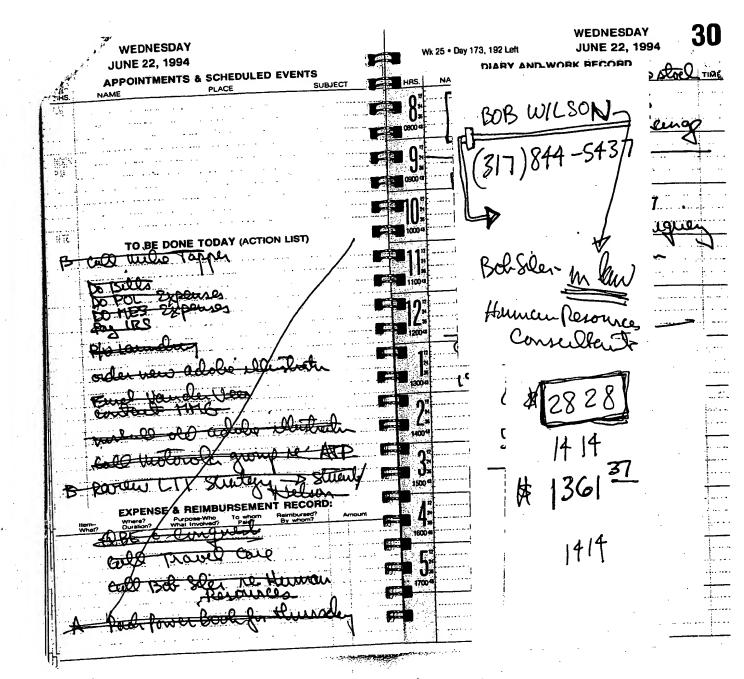
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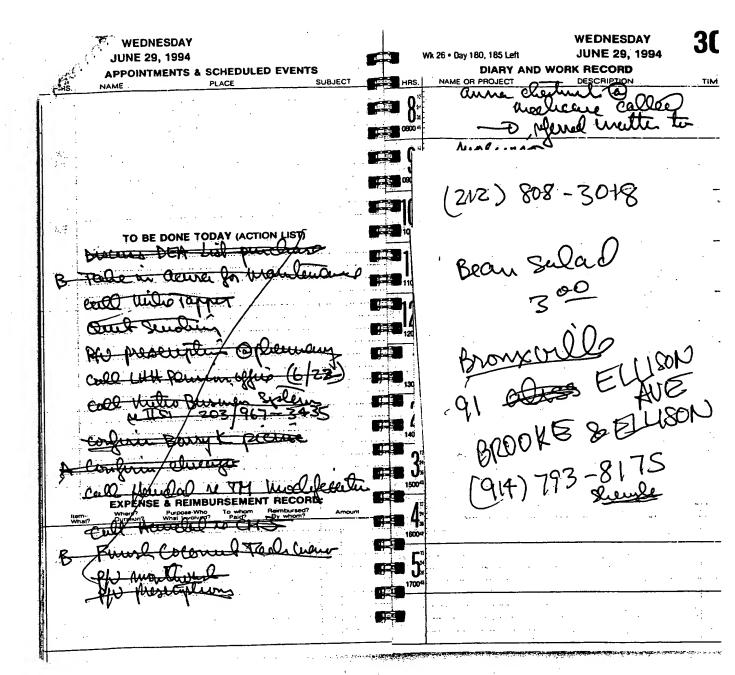
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